

# **HUMAN RIGHTS AND DEMOCRATIZATION IN THE CZECH REPUBLIC**

## **1994**



**A Report Prepared by the Staff of the  
Commission on Security and Cooperation in Europe**

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## **ABOUT THE ORGANIZATION (OSCE)**

The Conference on Security and Cooperation in Europe, also known as the Helsinki process, traces its origin to the signing of the Helsinki Final Act in Finland on August 1, 1975, by the leaders of 33 European countries, the United States and Canada. Since then, its membership has expanded to 55, reflecting the breakup of the Soviet Union, Czechoslovakia, and Yugoslavia. (The Federal Republic of Yugoslavia, Serbia and Montenegro, has been suspended since 1992, leaving the number of countries fully participating at 54.) As of January 1, 1995, the formal name of the Helsinki process was changed to the Organization for Security and Cooperation in Europe (OSCE).

The OSCE is engaged in standard setting in fields including military security, economic and environmental cooperation, and human rights and humanitarian concerns. In addition, it undertakes a variety of preventive diplomacy initiatives designed to prevent, manage and resolve conflict within and among the participating States.

The OSCE has its main office in Vienna, Austria, where weekly meetings of permanent representatives are held. In addition, specialized seminars and meetings are convened in various locations and periodic consultations among Senior Officials, Ministers and Heads of State or Government are held.

## **ABOUT THE COMMISSION (CSCE)**

The Commission on Security and Cooperation in Europe (CSCE), also known as the Helsinki Commission, is a U.S. Government agency created in 1976 to monitor and encourage compliance with the agreements of the OSCE.

The Commission consists of nine members from the U.S. House of Representatives, nine members from the U.S. Senate, and one member each from the Departments of State, Defense and Commerce. The positions of Chair and Co-Chair are shared by the House and Senate and rotate every two years, when a new Congress convenes. A professional staff assists the Commissioners in their work.

To fulfill its mandate, the Commission gathers and disseminates information on Helsinki-related topics both to the U.S. Congress and the public by convening hearings, issuing reports reflecting the views of the Commission and/or its staff, and providing information about the activities of the Helsinki process and events in OSCE participating States.

At the same time, the Commission contributes its views to the general formulation of U.S. policy on the OSCE and takes part in its execution, including through Member and staff participation on U.S. Delegations to OSCE meetings as well as on certain OSCE bodies. Members of the Commission have regular contact with parliamentarians, government officials, representatives of non-governmental organizations, and private individuals from OSCE participating States.

## HUMAN RIGHTS AND DEMOCRATIZATION IN THE CZECH REPUBLIC



### INTRODUCTION AND SUMMARY

In late 1988, the Helsinki Commission issued its last comprehensive report on the implementation of CSCE human dimension commitments in the East-Central European region, including on what was then Czechoslovakia. Such reports, issued periodically since the Commission's establishment in 1976, documented the unforgiving hold of communism over a vast region. The record in Czechoslovakia was particu-

larly frustrating: in spite of growing reform movements in neighboring countries, Czechoslovakia's hard-line regime seemed impervious to change. But in 1989, a wave of historic change swelled up and swept across East-Central Europe.

For many, the 1989-90 "Velvet Revolution" in Prague suggested an almost Hollywood image of the transition from communism: after decades of repression and totalitarian rule, masses of average citizens take to the streets in their capital. Day after day, they are joined by more people, in more cities. Within a few weeks, aging hard-line leaders have been forced from power in a bloodless revolution. The elite dissidents who have nurtured and protected the seeds of democracy through decades of hibernation are now placed in office, to once again bring human rights and fundamental freedoms to fruition in their country. These leaders are the best and the brightest and instantly command international respect for their new government.

As Czechoslovakia experienced the metamorphosis associated with this transition, the Helsinki Commission prepared several short briefing papers and reports for Congress on political developments in that country and their impact on the human dimension, including a short report on Czechoslovakia's first post-communist elections in 1990. But in the wake of this transformation, the scope and nature of the human dimension in East-Central Europe has changed—and continues to change—dramatically. This report constitutes the first comprehensive evaluation of the Czech republic's human dimension record since the 1988 report and since the Czech union with Slovakia ended in 1993.

Generally, the Czech Republic has received admiration for its overall record on human rights and political stability. Although many observers were disappointed in the dissolution of the Czechoslovak Federation, most regarded the peaceful process of divorce as praiseworthy. Respect for individual rights has improved dramatically in practice and the establishment of democratic institutions has proceeded well. In particular, free and fair national elections were held in Czechoslovakia in 1990 and 1992; rigid state control over the media has dissolved; steady progress continues to be made in the evolution of an independent judiciary; a new and improved constitution went into effect on January 1, 1993; and the Czech constitutional court has developed an active and significant role in ensuring a balance of power and in reviewing the laws of the land. The Czech Republic has generally engaged in constructive dialogues with its neighbors and made rapid integration with the West a high political priority.

A few practices remain, however, that are out of step with the Czech Republic's otherwise strong record, such as the over-zealous purging of former communists and the attachment of criminal penalties for criticism of the state or the president. For the most part, these kinds of problems are typical of countries in the region making the transition to democracy; the Commission is hopeful that the Czech Republic, as well as other post-communist states, will continue to make progress in addressing such problem areas.

One particular focus in this report, however, distinguishes the Czech situation from that of many other countries in East-Central Europe: the Czech citizenship law. For a handful of countries whose territories have divided, the question of who is and who is not a citizen in the newly emerging entities has proven to be a political mine field. Some countries, such as Ukraine and Slovakia, have avoided political controversy by adopting broadly inclusive citizenship laws; other countries, such as Latvia and Estonia, have spurred intense international scrutiny by reenacting pre-Soviet standards or adopting new and potentially exclusive citizenship laws that are perceived as discriminatory and socially divisive.

The Czech citizenship law, adopted after the divorce from Slovakia on January 1, 1993, shows a disappointing disregard for the rights of a minority and violates CSCE standards. As long as human rights remain the purview of the majority alone, the transition to democracy in the Czech Republic will be neither complete nor deeply rooted.

As good as the overall Czech record in human rights is today, the remainder of this report, as with all Commission reports, concentrates on those areas which continue to need improvement.

## BACKGROUND

*“How horrible, fantastic, incredible it is that we should be digging trenches and trying on gas-masks here because of a quarrel in a far away country between people of whom we know nothing.”*—Neville Chamberlain, September 1938

*The Founding of the Czechoslovak State.* At the end of World War I, the victorious allied powers, spurred by the Wilsonian vision of self-determination, carved from the defeated nations of Germany and the Austro-Hungarian Empire an independent state joining the peoples of Bohemia and Moravia (the Czech lands) with their western slavic neighbors to their south-east, the Slovaks. Although some Slovaks would later argue that the union created did not provide the degree of regional autonomy promised them during war-time negotiations, Czechoslovakia was, nevertheless, a voluntarily formed state imbued with a degree of legitimacy that involuntary unions (such as the former Soviet Union) lacked. This new country, Czechoslovakia, enjoyed both relative democracy and economic prosperity between the two world wars.

This good fortune was short lived, however. Although democratic, inter-war Czechoslovak politics were factionalized along various fault lines—and none more damaging than those of ethnicity. During the 1930's, Sudeten Germans, the largest minority in Bohemia and Moravia, grew in political strength; some Sudeten leaders established ties with Hitler and would eventually engage in treason against their country. At the same time, Slovak nationalists likewise initiated efforts to weaken or sever ties with Prague.

Against this background of rising political extremism within Czechoslovakia, German, Italian, British, and French leaders met in Munich in September 1938 and agreed to cede to Germany the Sudeten German areas of Czechoslovakia. (Poland and Hungary also received territorial concessions in exchange for complicity in this arrangement.) The Munich Agreement—now a symbol for the failure of the international community—paved the way for the full dismemberment of Czechoslovakia and the brutal occupation by German forces: by March 1939, Slovakia had declared independence and the Czech lands were left as a German “protectorate.”

At the end of the World War II, the Czech and Slovak lands were once again reunited, albeit in something slightly less than their pre-WWII borders. During the immediate post-war period, a form of brutal collective punishment was imposed on Sudeten Germans according to the so-called “Benes decrees.” The Benes approach rejected the option of adjudicating individual cases against the numerous Czech citizens who had in fact collaborated with the Nazis. Instead, all Sudeten Germans were presumed guilty and, if unable to prove their innocence, subject to mass expulsion. (The United States, the United Kingdom, and the Soviet Union blessed the basic idea of expelling ethnic Germans from Czechoslovakia, Poland, and Hungary at the 1945 Potsdam Conference, although some expulsions took place prior to that

agreement.) In practice, this expulsion meant that approximately 3 million men, women, and children were uprooted from their homes and their property was confiscated without compensation. Moreover, somewhere between 24,000 and a quarter million people died, were murdered, or disappeared during the deportation. Ethnic Hungarians also suffered under the Benes decrees, although their repression was less severe and less prolonged.

Meanwhile, the legacy of inter-war Czechoslovak democracy was further eroded as the foothold that communists had gained in this region both before and during the war (enhanced by the Soviet role in “liberating” parts of Czechoslovakia) slowly evolved into a stranglehold. After winning a nation-wide plurality in May 1946 elections—losing, in fact, in Slovakia, but winning a majority in the Czech lands—communist officials used their legitimate positions to usurp power, using force and ultimately illegitimate means to consolidate their control by 1948.

*The Communist Years: An Iron Fist in the Velvet Glove.* During more than forty years of communist rule, Czechoslovakia was marked by extreme degrees of political repression. The overall political process was rigidly controlled by the Communist Party and its security apparatus. Czechoslovakia's stronger economy (relative to other East-Central European countries) was used to mask the fact that it had one of the region's harder-line communist regimes: freedom of the press was severely restricted, freedom of movement was strictly curtailed, and independent speech and organizations were virtually non-existent. Religious freedom was stifled and Catholic activists were often broadly portrayed by the regime as fascists. Czechoslovakia's small Jewish community was, as in other Warsaw Pact countries, subject to occasional purges. Czechoslovak society, faced with the increasingly repressive tactics of the communists, abandoned its inter-war democratic traditions, retreating into the safety and anonymity of private life.

The most significant exception to this pattern of non-resistance came in 1967-68. At that time, reformist pressures, building up throughout East-Central Europe as a product of both political de-Stalinization and economic deterioration, led to the emergence of a reform wing of the Czechoslovak Communist Party, headed by Alexander Dubcek. After gaining control of the leadership in 1968, Dubcek embarked on a path of liberalization designed to give socialism “a human face.” Specifically, he removed Stalinists from government, prepared new economic programs intended to be more responsive to market pressures, and initiated efforts to ease Czechoslovakia towards more democratic political practices.

The Prague Spring in many ways foreshadowed the policies of perestroika and glasnost' that would be introduced by Soviet leader Mikhail Gorbachev twenty years later. But for Soviet leaders in 1968, these developments suggested the unravelling of communist control which they were not yet prepared to relinquish. Dubcek, overly confident that he could contain the forces he had unleashed and underestimating the reaction of other Warsaw Pact countries, rejected a defensive military plan put forward by General Vaclav Prchlik designed to prevent military intervention. On August 20, 1968, Soviet-led forces from Bulgaria, East Germany, Hungary and Poland, invaded Czechoslovakia, bringing the Prague Spring experiment to a close. Gradually, Dubcek and his reformers were removed, purged, or imprisoned; thousands of people left the country or went into “inner exile,” retreating into their country homes and gardens.



## THE TRANSITION FROM COMMUNISM: THE VELVET REVOLUTION

*"It is not a matter of if change will come, but when. Several developments indicate that the days of the hard-line leadership in Prague are numbered."*—Dennis DeConcini and Steny H. Hoyer, October 28, 1989

Czechoslovakia was one of the original states participating in the Conference on Security and Co-operation in Europe (CSCE). During the first fifteen years of the Helsinki process (1975-1990), the situation in the Czech republic, like the country as a whole, was marked by widespread and systematic human rights abuses. Organized dissent was virtually non-existent.

After the signing of the Helsinki Final Act in 1975, however, a human rights movement—known as Charter 77—was established in 1977. This group of people, numbering only around a few thousand, sought to pressure the Czechoslovak government to fulfill the human rights obligations it had undertaken at the United Nations and in the CSCE.

Although more organized and active than dissident communities in countries like Bulgaria and Romania, Charter 77 remained a movement of a relatively small number of intellectuals, never bridging the gulf which separated them from average citizens and never evolving into the kind of mass movement that Solidarity became in Poland. Nevertheless, the small core of people who signed the Charter (joined by others who quietly supported their work and fostered reform) maintained a steady vigil on behalf of human rights in their country at great personal risk and sacrifice, documented the abuses of their government and the Communist Party, and provided the necessary information for others to champion their cases at CSCE meetings. The Committee for the Defense of the Unjustly Persecuted, a companion organization, chronicled the arrest and imprisonment of people for the non-violent expression of their political beliefs.

By the late 1980's, the mood in East-Central Europe and the former Soviet Union began to change. In the Soviet Union, Mikhail Gorbachev had introduced major reform policies reminiscent of Czechoslovakia's own Prague Spring; Poland had elected a non-communist Prime Minister and opened some parliamentary seats to free and fair elections; and Hungary had become a transit point for East Germans fleeing repression. Slowly but surely, the drive for reform spread even to hard-line Czechoslovakia. In 1988-89, a dozen new independent organizations emerged advocating reform in areas ranging from environmental protection to human rights to arms control. Religious activism increased. Underground publications multiplied. Independent demonstrations, meetings, and conferences expanded in number and frequency.

This increased activism on the part of a traditionally silent population can be attributed to several factors:

- 1) the coming of age of the post Soviet-invasion generation;
- 2) increasing dissatisfaction on the part of a society who's silence had been purchased with consumer goods but which faced a progressively deteriorating economy;
- 3) rising expectations created by reform movements elsewhere in East-Central Europe; and
- 4) Soviet statements which implicitly (but, at that time, not yet explicitly) renounced the Soviet-led 1968 invasion that had restored the hard-line Czechoslovak leadership in power.

By the fall of 1989, the end of forty years of communist repression was in sight. On November 17, Prague police used particularly brutal and heavy-handed tactics to break up a student demonstration. Rumors that a student had been clubbed to death triggered massive protests, growing in size daily and spreading throughout the country. Eventually, it became known that the rumored death not only never occurred but that the rumor was started by the secret police itself; as Mary Battiata described it, “a half-baked secret police plan to discredit a couple of dissidents apparently boomeranged and turned a sputtering student protest into a national rebellion.” After weeks of massive public protests against the regime, Civic Forum emerged as an umbrella organization capable of leading Czechoslovak society in the transition from communism. On December 29, 1989, Vaclav Havel, the dissident playwright and former political prisoner, was elected President.

Within just a few months of what became known as “the Velvet Revolution,” many of Czechoslovakia’s most egregious human rights violations were resolved: all known political prisoners were released, travel restrictions curtailing freedom of movement were ended, Marxism-Leninism was removed as a required course from school curricula, agreement was reached to remove Soviet occupying forces from the country, the secret police and nomenklatura system were formally abolished, and a host of steps were initiated aimed at introducing the rule of law and rehabilitating the political, judicial, and educational systems.

Since then, over the course of the last five years, the Czech Republic has evoked admiration for its overall record on human rights and political stability. Respect for individual rights has improved dramatically in practice and the establishment of democratic institutions has proceeded well. Free and fair national elections were held in June 1990 and again in 1992, marking the return of political pluralism to the Czech lands. Rigid state control over the media has dissolved, paving the way for a competitive free press. Like in other countries in transition, the Czech government has not yet resolved all the challenges it faces in developing its own role as the necessary regulator of air waves for the broadcast media. Czech print media, however, quickly emerged after the Velvet Revolution as a lively and politically diverse force. Government expressions of hostility towards the media evident in some countries in transition have been generally absent in the Czech Republic.

Steady progress continues to be made in the evolution of an independent judiciary—an essential ingredient for the effective implementation of the rule of law—including through the retraining of judges and lawyers. Constitutional reform was complicated by the dissolution of the Czechoslovak state (discussed further below), but a new Czech constitution finally went into effect on January 1, 1993. Significantly, that constitution provides that international human rights treaties to which the Czech Republic is a party are superior to domestic law. The new Czech constitutional court has developed an active role in ensuring a balance of power and in reviewing the laws of the land.

## **THE DEMISE OF CZECHOSLOVAKIA**

For the people of the Czech lands, the November-December 1989 Velvet Revolution represented a chance to be free from totalitarianism; for the people of Slovakia, it was all that and more: a chance to take control of their own lives, their government and their destinies in a way that had been elusive throughout this century and unthinkable before that, a chance to receive credit for their successes and to run the risk of being held accountable for their failures. Most of all, it presented the challenge of defining their relations with their partners, the Czechs, and to decide whether to continue their seventy-year union. In the end, nearly seven decades of common statehood was insufficient to create the sense of shared destiny necessary to draw the people of the country—all the people—together.



In the immediate wake of the Velvet Revolution, it was not apparent to many people that a dissolution of the federation was inevitable. In Slovakia, the 1990 elections resulted in a coalition government between two pro-federation parties, Public Against Violence (the Slovak counterpart to the Prague-based Civic Forum) and the Christian Democrats. But Public Against Violence, lacking experience and organizational skills, let its popularity slip away by failing to consolidate its considerable prestige and influence (especially among rank and file workers). In contrast, more nationalist elements, including former communists as well as members of the right-wing Slovak National Party, were developing their popularity through increasingly strident anti-federation rhetoric.

As Slovakia's nascent non-communist party structures evolved, an off-shoot of Public Against Violence emerged in March 1991, calling itself the Movement for a Democratic Slovakia. Its leader, a former communist, lawyer, and boxer named Vladimir Meciar, mounted a pro-“sovereignty” soap box that was, first and foremost, a platform geared to the 1992 elections and, least of all, a program for actually governing what was to become an independent Slovakia.

Opinion polls between 1990 and 1992 consistently showed that a clear majority of the people in both Slovakia and the Czech lands supported some kind of union with each other. But the public lacked a common vision of what that union should look like concretely, and majority opinion broke down over the details: should there be a common army, a common currency, common membership in international organizations? More significantly, the population as a whole, whatever their individual preferences, remained relatively passive, deferring the management of civil society to a relatively small number of active players. The Movement for a Democratic Slovakia best exploited this political climate, promising that independence from Prague—a goal that, in and of itself, had only equivocal support—would be the means to achieve greater economic prosperity, an objective staunchly supported throughout Slovakia. This rhetoric found special resonance in Slovakia, where the hardships (e.g., increased unemployment) accompanying the early stages of Czechoslovakia's transition to a market economy were disproportionately greater. Consequently, the stage was set for the Movement for a Democratic Slovakia to win a plurality in the June 1992 elections and for the election of Vladimir Meciar as Prime Minister.

Following the June 1992 elections, Meciar's efforts to secure increased powers for Bratislava and greater economic subsidies for Slovakia came as no surprise. But his new Czech counterpart, Vaclav Klaus, quickly distinguished himself from his predecessors by laying down the limits of his pro-federation position and indicating that while he endorsed a common state he would not pay any price to maintain one. Klaus' defensive move to prepare the Czech government for an eventual split seemed to deprive Meciar of his leverage to exact a variety of economic and political concessions in return for remaining in the union. By the end of July 1992, agreement had been reached between Klaus and Meciar on dissolving the federation.

The agreement between Klaus and Meciar has been subject to some criticism because they did not put the question of the dissolution of the country to a popular referendum. From an international perspective, there are no clear guidelines on how questions of partition, separation, or succession should be resolved—except that they must be resolved peacefully and through democratic means. In several countries within the CSCE community, referenda have been used successfully to measure—and document—popular support for a particular political option, such as independence or separation. In some places, though—such as the former Yugoslavia, Nagorno-Karabakh or the Trans-Dniester region of Moldova—referenda have been insufficient to make the transition to independence peaceful. In large part, this is

because referenda are not always able to address complicated issues that require more than a simple thumbs-up, thumbs-down response from society and because they have not always succeeded in engaging the full spectrum of all parties concerned. In the case of Czechoslovakia, the apparent acceptance of the separation throughout the country (if, albeit, reluctant acceptance) suggests that a referendum may not have been necessary to validate or confirm popular consent of the actions of the governments. Moreover, the argument has been persuasively made that the more critical issue confronting the people and leaders of the Czech and Slovak republics was not whether to have a union, but what kind of union to have; this question, it was widely agreed, was not one well suited to resolution by a referendum.

Throughout the fall of 1992, Czech and Slovak leaders continued to meet, hammering out the preliminary arrangements for allocating the country's assets. On January 1, 1993, the Czech and Slovak Federal Republic split, peacefully and by the common agreement of their democratically elected leaders, into two independent republics.

*CSCE Activities.* After the dissolution of Czechoslovakia, each new state was admitted into the CSCE according to a prior decision of the Council of Ministers taken in Stockholm on December 14, 1992. That decision provided for each Republic to join the CSCE as a full participating State after the January 1, 1993 dissolution of the federation and upon the submission of letters of accession to the CSCE Chair-in-Office.

Subsequently, in accordance with now established CSCE practice, the CSCE Chair-in-Office organized a rapporteur mission to visit each of the newly admitted participating States. The mission visited the two republics from March 8 - 12, 1993 and issued a single report that is available to the public from the CSCE Secretariat in Prague. On net, the section dealing with the Czech Republic drew positive, albeit somewhat superficial, conclusions. (CSCE activity on Roma issues is discussed further below.)

## **CHALLENGES IN THE HUMAN DIMENSION: REVENGE, RETRIBUTION, AND RECONCILIATION**

In the newly independent states and emerging democracies of East-Central Europe and Eurasia, leaderships and rank and file communities alike face a broad range of problems stemming from their totalitarian past. History, from post-Nazi Germany to post-Franco Spain, provides some guidance for dealing with these problems; still, there is no exact parallel or precise analogy for the unique ordeals these countries have weathered during this century and for the transitions they are undergoing today. Accordingly, there is no ready handbook explaining how to undo the damage that has been wrought by decades of communist dictatorship.

Not surprisingly, many countries in East-Central Europe have stumbled on the path to democracy as they attempt to confront and redress their communist legacy. In the case of the Czech Republic, many of its current human rights problems stem from the efforts to make past wrongs right in a post-totalitarian regime.

## Lustration

*“To take away the right to political participation—even without imposing criminal liability—is a serious punishment in a democracy.”*—Andras Sajó, Chief Legal Counsel to Hungarian President Árpád Göncz, speaking at the Salzburg Conference on Justice in Times of Transition, March 1991

Among the human rights problems raised by the international community, the Czech “lustration” (purification) law has probably received more attention than anything else; an abbreviated list of its critics includes the CSCE Mission to the Czech Republic, the Helsinki Commission, the International Labor Organization, the U.S. State Departments annual Country Reports, as well as Helsinki Watch and other non-governmental human rights groups.

Like all the countries in the region, the Czech Republic is grappling with the highly sensitive subject of what to do with its former communists, collaborators, and secret police. On the one hand, there is a popular desire to see those former officials responsible for egregious human rights violations, particularly where deaths have occurred, held personally and criminally accountable for their actions. On the other hand, there is a fear that efforts to administer a Jacobin justice will undermine the very democracy that the Czech Republic has sought to establish.

To be sure, all these countries are traversing uncharted and dangerous waters. If they fail to establish adequate safeguards for their fragile, emerging democracies, they run the risk that the old guard will exploit this period of transition to usurp once again and ultimately monopolize power. Moreover, a failure to hold past human rights violators accountable for their actions may undermine the foundations of a new order in which human rights will be safeguarded. But if new governments are overzealous in their efforts to expose collaborators and agents of the former secret police and exclude them from government, they open themselves up to the criticism that they are engaging in a witch hunt, fomenting reactionary backlash, and using the same tactics their predecessors used to execute political purges.

Post-communist political purges got off to an inauspicious start in Czechoslovakia in early 1991, when a parliamentary commission was tasked with vetting the legislature's ranks of former agents or informers of the state security agency. In perhaps the most celebrated case, Jan Kavan—a man known to the West as a London-based exile who had spent decades supporting dissident activities and publishing—was identified as a collaborator. Kavan was initially denied access to the allegedly incriminating files and, at the time he was publicly denounced to his colleagues and pressured to resign, had only been allowed to see part of the files used against him. Illustrating the difficulty of definitively determining one's innocence or guilt as a collaborator based on partial and often unreliable files, the Ministry of Interior at one time mistakenly issued Kavan two contradictory certificates, one clearing his name and one identifying him as having had ties to the secret police.

Eventually, the ad hoc approach used in early 1991 gave way to a formal lustration law, passed in October 1991, designed to remove vestiges of the former communist apparatus, including secret police and collaborators, from sensitive areas of the government—elected and appointed positions—and the media for five years. This goal is understandable and, in fact, the failure of some countries to take effective measures to remove from power those associated with the former hard-line dictatorship has been criticized by the human rights community. Still, the Czech law in its current form lacks adequate safeguards for due process and the rule of law.

Although the Czech Constitutional Court ultimately declared parts of this law to be void, the remaining provisions continue to represent an overzealous attempt to remedy past wrongs and fails to adequately protect the rights of those accused. In particular, the law has been criticized as a form of collective guilt; for penalizing prior status and not behavior; for placing the burden of proof on the accused; for limiting the accused's access to exculpatory evidence; for lacking a judicial process of appeal; and for failing to distinguish between the different circumstances of collaboration, including mitigating circumstances. The law has also been criticized for being implemented in a sloppy fashion (with secret police files being leaked to the public for allegedly political purposes, particularly before the June 1992 parliamentary elections) and because it relies on records compiled by communist agents that have been purposefully misleading. Moreover, the lustration required under the law has opened the door to the lustration of positions not specified by the law, both governmental and non-governmental; recourse against abuse in those instances seems even more limited.

The International Labor Organization suggested that as many as one million people might be affected by the law, an estimate that presumably reflects the number of people who might be included in secret police files and hence subject to the reach of the law if they were to seek an office specified under the law. In practice, at least 210,000 people have already been vetted by the Interior Ministry under the law as of August 1993. Significantly, of the 70 cases that have been appealed to the courts, the government has lost 65 cases.

Some observers have suggested that Czech society is growing weary of its anti-communist witch hunt, decreasing public pressure on the government to actively implement the law. The Czech government, meanwhile, seems to believe that international interest in lustration is on the wane. According to the 1993 U.S. State Department Report on the Czech Republic, for example, “[f]oreign ministry officials claim that in 1993 both the CSCE and the Council of Europe informed them that neither organization viewed lustration as a serious human rights problem in the Czech Republic. Similarly, labor ministry officials note that in 1993 the International Labor Organization did not renew its previous criticism of lustration with the advent of the new Czech State.” In fact, as noted above, the CSCE Mission reporting on the human rights situation in the Czech Republic specifically flagged concern over the lustration law; no other official consideration of the Czech human rights record has been undertaken by the CSCE since that report was prepared. Czech official attitudes seem to suggest that criticism of this kind can be weathered and, in the end, survived; some of those opposed to the law appear to have given up hope of seeing it changed before its five-year term expires in October 1996.

### **Outlawing the Past**

If Czech society is growing weary of its anti-communist crusade, it is not evident in the acts of the legislature or the Ministry of Interior. On the contrary, on July 9, 1993, the Czech parliament passed a bill “outlawing” the former communist regime. In addition, the law lifts the statute of limitations for the period February 25, 1948 to December 1989; the precise scope of crimes included under this section is unclear. The law has already withstood one constitutional challenge and, recently, the Ministry of Interior relied on the law (specifically the provisions lifting the statute of limitations) to bring charges against three former secret police agents for alleged acts of torture committed more than 40 years ago. Similar legislation lifting the statute of limitations for communist-era crimes has already been adopted in Hungary in the face of international and domestic criticism.

President Havel has said the Czech law was designed to send the signal that “one era has ended and a new one has begun.” That is, by holding the past regime morally responsible for its acts (as well as by validating opposition to that regime), the law was intended to mark a break with the past and pave the way for the future. Havel's stated preference, however, was to send this signal through a political declaration, rather than a legal decree—drawing a distinction between moral responsibility and legal liability.

Those opposed to the law have argued that it violates international standards by lifting the statute of limitations, by once again relying on the principle of collective guilt, and by criminalizing association with an idea (rather than specific acts). Although the law passed constitutional muster on first examination, individual cases brought under the law may raise new constitutional questions and such cases may also be appealed to the European Commission on Human Rights. If this law is invalidated, Czechs will have neither a political declaration regarding the moral responsibility of the past regime for its acts nor a law providing for the regime's legal accountability.

Whether or not this law ultimately survives its legal challenges, prosecutions brought under the law are likely to present Czech society with the prospect of the trial of infirm and aged leaders, as has been the case with Honecker in Germany and Zhivkov in Bulgaria, or the conviction of mere lower ranking functionaries (rather than those who gave orders), as was the case with East German border guards and the murderers of Father Jerzy Popieluszko in Poland. Under such circumstances, it is unclear whether the law will truly symbolize a break with the past or a society still haunted by it.

### **The Defamation Law**

Last year, the Czech parliament passed a law making defamation of the state (Czech Republic) or the Presidency a crime punishable by two years in prison. Significantly, President Havel himself opposed this law. Amnesty International has protested the law and confirmed that it would consider anyone prosecuted under it a political prisoner.

The Helsinki Commission has strongly criticized similar laws in Poland, Hungary, Slovakia, Turkey and Tajikistan. By imposing criminal penalties for what may be mere criticism of the government, these laws are reminiscent of the laws used by communist regimes to specifically target dissidents. Moreover, they may chill free speech during an important period of political debate and development for the Czech Republic. The Czech Republic's defamation law is inconsistent with CSCE standards guaranteeing a free media and free speech.

### **Sudeten Germans**

As described above, Czechoslovakia expelled large numbers of Sudeten Germans from its territory at the end of World War II. Although the basic idea of expelling ethnic Germans from Czechoslovakia, Poland and Hungary had been blessed by the United States, the United Kingdom and the Soviet Union at Potsdam, the methods used for the expulsions were, in many instances, neither “orderly” nor “humane,” as ultimately called for by Czechoslovak and international authorities. By contemporary standards, even the concept of “exchanging” populations has become tainted in light of its (at best) disappointing historical record as well as the on-going tragedy of “ethnic cleansing” in Bosnia-Herzegovina.

Although the expulsion of ethnic Germans appears to have been even more brutal and more lethal in regions east of the Czech lands, the issue of the expulsion of Sudeten Germans appears to have become a question of far greater political significance in the Czech Republic than post-communist Poland or Russia. This may stem from several factors.

First of all, Vaclav Havel—the country's first post-communist president and the recognized conscience of the nation—has consistently criticized the brutality of the expulsion and its foundation on “collective guilt.” Moreover, Havel has argued that Czechs should apologize for the wrongs committed in carrying out the expulsions. Second, after the Velvet Revolution, Czechoslovakia and Germany sought to draft a new treaty of friendship and cooperation. This raised the specter, in the minds of many Czechs, that the German government would try to return Sudeten Germans to Czechoslovakia, seek to have their confiscated lands returned to them, or seek restitution on their behalf. Finally, like the treaty debate, Czechoslovak (later Czech) efforts to draft laws providing compensation or restitution for losses incurred both during and before the communist era raised fears that Sudeten Germans would seek to be included under the law and possibly even return to the Czech Republic en masse.

The political sensitivities surrounding this issue have been further complicated by the fact that agreement on compensation or reparation from the German government for the Czech victims of Nazi crimes has not yet been reached. In addition, many Czechs feel that the German government has failed to engage in the kind of apology for Naziism that, for example, President Herzog articulated recently when he attended the 50th anniversary commemoration of the Warsaw Uprising. This appeared to be a particularly glaring omission in light of the numerous overtures and apologies made by President Havel.

The expulsion of the Sudeten Germans is not an issue of interest merely to historians, but one that reveals a great deal about the Czech Republic today. At issue, first and foremost, is the depth and durability of reconciliation between the Czech Republic and Germany and between Czechs and Germans. Leaders of both countries have expressed concern that the Sudeten German issue should not be distorted to symbolize the current state of their relations which are, on net, positive. Both sides appear to be concerned, however, that a failure to resolve popular differences over this and related issues will sour the long-term ability of their countries and peoples to cooperate and develop mutually beneficial relations.

Also at issue is the question of whether or not the Czech people understand that, even if the expulsion was blessed by the international community at that time, such expulsions are impermissible today and that the brutality of the expulsion process was, by any standards, unacceptable. If Czech society were to signal its understanding that the expulsions were badly administered, the international community might have greater confidence in the assurances given by current Czech officials that they are not going to expel Roma (Gypsies) today (see below).

Finally, at issue today is the message Czech society will send to the international community regarding its ability to come to terms with both the strengths and the weaknesses of its past. Each country and every nation has inglorious pages in its history and the United States is no exception; Americans continue to struggle with a legacy of slavery, brutal treatment of native Americans, and even the wrongful confinement of American citizens because of their race during World War II. In such instances, the Helsinki Commission believes that Americans and others alike have learned that the best way to address past injustices is to

confront them head on. Most recently, for example, the United States Congress passed a resolution in November 1993 apologizing to Native Hawaiians for overthrowing the Kingdom of Hawaii in 1893 and depriving Native Hawaiians their right to self determination.

In East-Central Europe, the end of communism has created unprecedented opportunities for countries to examine their own pasts as well as their relations with their neighbors—the Soviet massacre at Katyn, the role of Tiso in Slovakia and even the expulsion of Sudeten Germans. As President Havel has said in remarkably courageous and frank comments on the Sudeten issues,

What is more, it is necessary to admit far more unpleasant things about ourselves, for example, that during the first republic we did not successfully resolve the problem of minorities; that Slovakia has not always been treated well; that our resistance fighters did not enjoy too great a public support, be it during the war or under communism (people rather eschewed them); that a great part of the public voted communist; that we tolerated the truth about the suffering of Jews being suppressed; that even during the war not many Czechs stood up for them; or that after the Munich diktat many Czechs and Czech organizations yielded to the most disgraceful forms of anti-Semitism. We are no worse than others, but we are not better either.

#### **A Litmus Test: Treatment of the Roma Minority**

*“Each of these countries [in East-Central Europe] finds itself at a different stage of transformation, and I am, of course, convinced that the Czech Republic is far ahead of all other countries in the region.”*—Vaclav Klaus, Prime Minister of the Czech Republic

At first blush, the Czech record on human rights appears to be, in most respects, a good one, perhaps even one of the best in the region. While this is certainly true in most respects, Czech performance is significantly flawed in an area that has been the subject of considerable international attention in other countries but, inexplicably, has been glossed over in the Czech Republic: discrimination and intolerance against Roma (Gypsies).

In the post-Cold War Czech Republic, the historic wide-spread social hatred of Roma—as exemplified during World War II by the Lety camp used to deport Roma to Auschwitz and during the communist era by the forced sterilization of Roma women—has manifested itself again. At least eight Roma have been killed in hate-crimes since 1991 and, in the last year, a Rom died under suspicious circumstances while in police custody. Not only has the government response to these crimes been inadequate, the government has been part of the problem, institutionalizing this prejudice: several localities have passed laws discriminating against Roma residency and the national parliament has passed a citizenship law that has stripped as many as 100,000 Czechoslovak Roma of their most fundamental civil rights. President Vaclav Havel, virtually the only Czech leader who has spoken out on the treatment of Roma in his country, has described “the Gypsy problem” as a litmus test for a civil society.

#### **Background**

Roma are believed to be the descendants of a people from Northern India who, beginning around the 10th century, migrated in successive waves through Persia to Europe. By the beginning of the 14th century, they were present in many regions of the continent. The diverse experiences of Roma over a vast stretch of Europe have given rise to many regional differences in dialect, cultures, degree of assimilation, and current situation.



The name “Gypsy,” which Roma are more commonly called, is a corruption of the word “Egyptian,” reflecting the mistaken belief that Roma had come from Egypt. Although many Roma continue to identify themselves as “Gypsies,” some consider this word as well as its alternates in other languages (e.g., zigeuner, zingari, gitans, Tsiganes, etc.), to be pejorative. (This report uses the following terms: Roma, the plural form for the people; Rom, the singular for a person; and Romany, the adjectival form.)

No one knows exactly how many Roma lived in Czechoslovakia prior to World War II. It is known, however, that during the war thousands of Roma from Bohemia and Moravia were deported to extermination camps and that, according to post-war censuses, only a few hundred survived the war in the Czech lands. (Both government and non-governmental representatives have pointed out, however, that censuses have historically under-represented the numbers of Roma throughout Europe.)

### **The Lety Archives**

Recently, a Czech-American historian has uncovered archival material relating to a camp maintained in the Czech lands from 1940 to 1943 in the village of Lety. The Lety camp held primarily Roma from throughout Bohemia and Moravia and served as a point for their deportation to death camps, primarily Auschwitz.

Although these archives were apparently known to Czechoslovak historians, few historians or even the descendants of victims have explored the Roma extermination and it does not appear that the significance of these archives was well understood. In fact, they may be unique in documenting a part of the Holocaust that, until now, has largely been shrouded in darkness.

The Helsinki Commission Chairmen have supported a request by the U.S. Holocaust Memorial Museum to obtain copies of these archives and urged the Czech government, consistent with its CSCE obligations, to preserve and protect the Lety camp site. Specifically, CSCE participating States have agreed, at the 1991 Cracow Symposium on Cultural Heritage, to the following:

31. The participating States will strive to preserve and protect those monuments and sites of remembrance, including most notably extermination camps, and the related archives, which are themselves testimonials to tragic experiences in their common past. Such steps need to be taken in order to ensure that those experiences may be remembered, may help to teach present and future generations of these events, and thus ensure that they are never repeated.

32. The interpretation of sensitive sites of remembrance can serve as a valuable means of promoting tolerance and understanding among people and will take into account social and cultural diversity.

As communism's grip in Europe has loosened, many countries have found themselves with historic opportunities to act on this commitment. The Czech government, consistent with this trend, has given assurances to the Helsinki Commission that it will cooperate with the Holocaust Museum in microfilming the Lety archives. Equally important, the Czech Embassy has conveyed the “maximal support” of Interior Minister Jan Ruml to commemorate Roma camp sites at both Lety and Hodonin. Like the commemoration of the 50th anniversary of the Nazi order to exterminate the Roma at Auschwitz, held in August 1994 in Poland and attended by thousands of Roma as well as diplomatic representatives, such gestures can go a long way in reconciling diverse communities and ensuring that the atrocities of the past are not repeated.

Some other countries in the region have similar historic experiences involving the incarceration and deportation of Roma during World War II; Czech openness on this issue may serve as an example to both Eastern and Western countries.

### **Hate-crimes and Other Manifestations of Intolerance against Roma**

Intolerance against Roma is pervasive in Europe, and the Czech Republic is no exception. This intolerance has proven especially dangerous in post-communist societies, where the new latitude for freedom of expression all too often translates into an expression of hatred. At the time of the passage of the Czech citizenship law, for example (discussed further below), there has been a rising tide of hate crimes targeting Roma. The German-based human rights group Romnews has issued numerous bulletins reporting on skinhead violence and other hate crimes against Roma in the Czech Republic; the annual Country Reports prepared by the U.S. Department of State and submitted to Congress have reported on at least eight hate-crime murders of Roma since 1991; a 1993 report of the Ministry of Interior also documents increasing hate crimes directed against Roma, including murders; and Amnesty International has urged the investigation of the death of Jaroslav Jonas, a Rom who died under suspicious circumstances while in police custody. In addition, there have been press reports on the calls of a right-wing party, the Republican Party, to rid the country of Roma and on local measures and ordinances directed specifically at Roma and adopted in contradiction to national and international law. Proposed (but, in the end, defeated) criminal legislation at the national level made headlines in March 1993. That legislation, drafted by the Prosecutor-General, would have enhanced police powers to restrict the freedom of movement of non-resident visitors in cities; a report accompanying the draft legislation made clear that it was designed to get rid of Roma.

Throughout their sojourn in Europe, Roma have been denied education and then deemed ineducable; they have been shunned from the work place and then called lazy; they have been barred from public restaurants and grocery stores and then vilified when they steal food; they have been refused housing and then denigrated for living in shacks; they have been banned from cities and villages and then defamed as shiftless “wanderers;” they have been forcibly settled as slaves and then berated for not assimilating; they have faced forced sterilization and then been scorned for lacking family values.

Worse still, these prejudices are not frozen in the past. At each turn, Roma continue to face the self-fulfilling prophecies of the societies in which they reside. Opinion polls throughout this region have shown that Roma are the most disliked minority on the continent and, it may follow, the most at risk. For example, according to a 1991 opinion poll conducted in Poland, Hungary and Czechoslovakia, 85 percent of the Czechoslovak respondents said they would not like to have Roma as neighbors—demonstrating greater intolerance towards Roma than toward any other group included in the survey (i.e., Russians, Blacks, Arabs, Asians, and Jews). In the same poll, 87 percent of the Czechoslovak respondents believed that Roma themselves provoke hostility.

The historic prejudices against Roma have left them with a host of social and economic problems—including higher levels of illiteracy and imprisonment—that may now take generations to address, even with the support and good will of a government. But government action alone will not undo the past. On the Roma side, this will require a commitment to recognize that, regardless of their origins, the social and economic problems they face today must be aggressively fought from within their own ranks. For some Roma, this may also mean coming to terms with the uncomfortable fact that many of their traditional occupations will not be viable in the twenty-first century and, accordingly, some traditional ways of life may be unsustainable. On the Czech side, it should be recognized that some fundamental human rights inhere in

each person because of his or her humanity alone; these rights may not be denied or abridged simply because the people in question are disliked as a group. Characteristics within a group should never be used to deny individual members of that group their basic human rights.

### **The Czech Citizenship Law**

Fundamental questions of citizenship—who is and is not a citizen—are central to the process of democratization. At the 1991 CSCE Oslo Seminar on Democratic Institutions, for example, a Baltic representative declined to engage in the general debate on election laws; as he explained, other legislation in his country would be meaningless until a basic law on citizenship was passed. A citizenship law would, in turn, determine who could vote, run for office, or own media enterprises and banks, as well as a host of other rights and privileges. In some countries, citizenship must be established before one may petition for redress against past official abuse or restitution for confiscated property.

Citizenship—or the lack thereof—defines the relationship between an individual and the state. In East-Central Europe and the former Soviet Union, citizenship laws now have the potential to embrace people within states of their own choosing; they also have the potential to exclude hundreds of thousands of people, rendering former “citizens” stateless. This is not only true in the Baltic States, where massive immigration from the Soviet Union during their fifty years of occupation has created significant shifts in the ethnic composition of the populations. Population exchanges also took place—both voluntarily and involuntarily—among the former Soviet Republics, which are now separate, independent states. It is also an issue in the new state of the Czech Republic.

Czechoslovakia was a voluntarily formed state. From the period of its original founding until 1969, only one form of citizenship was recognized: Czechoslovak citizenship. After the crushing of the Prague Spring, however, as part of the so-called “normalization,” a form of pseudo-federalism was introduced to pander to Slovak nationalists and, it was hoped by the communists, to blunt resistance to the harshly restrictive human rights policies of the post-Soviet invasion regime. In fact, genuine federalism was never implemented in practice, and highly centralized control continued to be exercised by the Communist Party in Prague.

As part of this pseudo-federalism, a new citizenship law was implemented in 1969, according to which one was deemed to be a “Czech” citizen or a “Slovak” citizen in addition to a citizen of the Czechoslovak Socialist Federal Republic. At the international level, only Czechoslovak citizenship had any recognized status.

Superficially, “Czech” or “Slovak” citizenship at the national level was somewhat analogous to an American’s identification as a resident of a particular state, like North Carolina. In substance, however, these designations were devoid of any real meaning, as Czech officials have acknowledged. For purposes of official documentation, one’s “Czech” or “Slovak” citizenship was not recorded in official documents such as one’s passport, identification card, or even library card; it was not recorded on censuses; it had no relationship to any rights, privileges, or duties under Czechoslovak law. (In contrast, state residency in the United States is tied to matters such as in-state tuition in schools, tax rates, administration of social services, and is recorded on national censuses.) Moreover, between 1969 and 1992, one could apply for either “Czech” or “Slovak” citizenship as a mere formality, without any conditions of any kind—although

many Czechoslovaks never declared either, since such an action had no practical impact. In short, the 1969 Czechoslovak citizenship law was, like so many other communist era laws, a sham. And, inexplicably, it is on this law that the post-communist Czech government bases current claims to Czech citizenship.

Upon the dissolution of the Czechoslovak Federal Republic at the end of 1992, Slovakia adopted a law—consistent with its CSCE obligations—which deemed all citizens of the former Czechoslovakia to be eligible for Slovak citizenship. The Czechs, on the other hand, adopted a far more restrictive law, according to which only those deemed to be “Czechs” under the 1969 communist law were automatically entitled to Czech citizenship in the newly independent Czech state. Those deemed to be “Slovaks” under the 1969 law—regardless of the fact that the old law was meaningless in practice and regardless of how long one had lived in the Czech lands—were deemed to be aliens, albeit eligible to apply for Czech citizenship under what were marginally less restrictive conditions than those which apply to other potential immigrants. In effect, this step retroactively attached legal consequences to the 1969 citizenship law—e.g., loss of the right to vote, to participate in the political process, to participate equally in the economy, etc.—that the law lacked at the time it was passed.

The stated rationale behind the Czech citizenship law was to secure the borders of the newly independent Czech state and prevent a wave of economic immigrants—particularly from the Czech Republic's poorer neighbor, Slovakia—from flooding into the Czech lands. The Czech Republic, of course, as a sovereign state is entitled to exclude economic or other immigrants from coming to the Czech Republic after its creation on 1 January 1993. In fact, however, the Czech citizenship law is overly broad in meeting that goal by not merely restricting prospective immigrants but by stripping citizenship from Czechoslovaks already living in the Czech Republic.

Czech officials deny that they are “stripping” citizenship from anyone, since they maintain that former Czechoslovaks who were not “Czech” citizens have no “Czech” citizenship to be stripped of. But given that neither “Czech” nor “Slovak” citizenship had any meaning under the 1969 law, it is implausible to maintain that current “Czech” and “Slovak” citizenship—resulting from the dissolution of the Czechoslovak state and the creation of two new countries—is really a continuation of those designations under the 1969 law. Moreover, the theoretical availability of citizenship for some people in another country, does not provide a sufficient justification for the Czech government to deny citizenship to Czechoslovak citizens who have lived their entire lives in the Czech Republic or whose ties to Slovakia have long ago dissolved. Likewise, many Russian-speakers in the Baltic States find little practical value in the theoretical availability of citizenship in Israel, Russia or Ukraine if their life-long homes have been in Latvia or Estonia.

Under the 1993 law, the conditions for Czech citizenship imposed on applicants considered to be Slovak citizens under the 1969 law include, in particular, two criteria which strip citizenship from those former Czechoslovak citizens who are perceived as socially undesirable: an applicant must prove “permanent” residency in the Czech Republic of at least two years and have had a clean criminal record for at least five years. It was highly predictable that, relative to other ethnic groups, the specific conditions imposed by this law would have a serve to exclude almost exclusively Roma. Nevertheless, the Czech Ambassador to the United States, Michael Zantovsky, has insisted that there was no racist or discriminatory intent on the part of legislative drafters.

The requirement of a clean prison record is particularly troubling. Although many countries exclude prospective immigrants who have criminal records, it is inconsistent with international practice to strip people of citizenship merely because they have violated their national law (although some states—such as the former Soviet Union—exceptionally stripped people of citizenship as a result of alleged treason or other high crimes against the state itself). Moreover, the current denial of citizenship based on a past criminal act serves to attach to that criminal act a penalty that was not in place at the time the act was committed, in violation of international law. For example, the 1948 Universal Declaration of Human Rights states, “No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. *Nor shall a heavier penalty be imposed than the one that was applicable at the time when the penal offense was committed.*” Article 11(2) (emphasis added).

In many countries, including the United States, minority communities often have higher levels of imprisonment. To some degree, this may reflect the difficult social and economic situations in which they live—often itself a product of historic discrimination and prejudice. Worse still, this sometimes reflects the intentional and discriminatory targeting of minorities for arrest by local law enforcement officials, even if contrary to the policies of the national government. This has clearly been the case in the Czech Republic.

For example, as the U.S. State Department has reported, a number of Czech localities issued measures and ordinances in 1993 directed specifically at Roma, in contradiction to national and international law. Some local officials openly made Roma—widely portrayed in the Czech media as ineducable, inveterate thieves—the special targets of after-hours crime sweeps, giving reason to believe that local officials were trying to guarantee that all Roma have police records and would be ineligible for citizenship.

A recent report prepared by a human rights group, the Tolerance Foundation, suggests that as many as 100,000 Roma have been excluded from citizenship under the new law. In a meeting with Commission staff, an official from the Council of Nationalities speculated that 15,000 to 20,000 Roma may currently lack citizenship. Her estimate was based on the numbers of people applying to the Ministry of Labor for social benefits who lack citizenship. Her assumption seemed to be that all persons who have applied for benefits and lack citizenship are Roma (as opposed to any other ethnic group) and that all Roma who lack citizenship will have applied for social benefits. She admitted, however, that her office has no authoritative statistics on this subject and deferred this inquiry to the Ministry of Interior.

The Ministry of Interior—the government body tasked with implementation of the law and hence the only body in a position to authoritatively determine how many people have applied for, received, or been denied citizenship—insists that this figure is too high. Nevertheless, the Ministry also stated to Commission staff that it has only kept figures on the number of applications positively accepted, not on the number of denials, and that it has kept no figures on the ethnic breakdown of applicants. (This is somewhat ironic, given how frequently local police officials report on the ethnicity of criminal suspects, often identifying them as Roma.) Notwithstanding the position of the Ministry of Interior, the Czech Embassy in Washington has recently suggested that only 100 applications for citizenship have been formally denied. The Tolerance Foundation's estimate of 100,000 denials is based on a study of the application of the citizenship law in five Czech cities with large Roma populations.

While Czech officials have maintained that their law is analogous to the immigration laws in place in other European countries, the issue here is not the permissible grounds for extending citizenship to new immigrants, but the permissible grounds for stripping citizenship from those who already have it. Thus far, no other newly independent state in the CSCE community has adopted the practice followed in the Czech Republic; on the contrary, it is instructive to compare this situation to the position adopted by the international community regarding citizenship laws in the Baltics.

After 1991, considerable international concern was raised regarding the prospect that Russian-speakers in Estonia, Latvia, and Lithuania might be excluded from obtaining citizenship in the newly independent Baltic States. In fact, the legal claim of many Russian-speakers in the Baltics to citizenship is far weaker than that of Roma in the Czech Republic, since 1) the Baltic States were not voluntarily incorporated into the Soviet Union (cf. the voluntary union between Czechs and Slovaks); and 2) many Russian-speakers came to the Baltic States as a result of the illegal incorporation of the Baltic States into the Soviet Union in violation of international law (cf. the post-war movement of Roma from Slovakia to the Czech lands, orchestrated by the Czechoslovak regime itself). Nevertheless, the CSCE community, including its High Commissioner for National Minorities, the United Nations, and the Council of Europe, have insisted that even Russian-speakers who entered the Baltic States as a result of the illegal incorporation must now be afforded a reasonable opportunity to become citizens. Clearly, a consistent position argues against denying citizenship to Roma, legal citizens of the voluntarily formed Czechoslovak Republic and residents of the Czech lands, today. An alternative position would not only appear hypocritical, but might have serious implications for more politically volatile republics of the former Soviet Union.

Regrettably, the Council of Europe (CoE) missed the opportunity to examine and evaluate the Czech citizenship law when the Czech Republic applied for CoE admission. A CoE report prepared by the Parliamentary Assembly in June 1993 upon the Czech Republic's application only gives cursory attention to this subject, in fact misstating the law as providing that "all inhabitants of the [Czech and Slovak Federal Republic] residing in the Czech Republic on 1 January 1993 are entitled to Czech citizenship." Based on this misunderstanding of the law, the Czech Republic was recommended for admission without condition. One can only speculate whether, had the Council understood that thousands of people in the Czech Republic would be stripped of their citizenship based on criteria that in practice fall along ethnic lines, the Czech Republic would have been recommended for admission. (Significantly, CoE representatives have informed the Latvian government that Latvia would be ineligible for CoE membership unless it revises the quota system established to limit the naturalization of Russian-speakers.)

In contrast, the report prepared by the CSCE Mission to the Czech Republic, in connection with Czech admission to the CSCE process after the dissolution of the Federation, specifically raised concern over the citizenship law and its discriminatory impact on the Roma community. In particular, the Mission recommended that the CSCE High Commissioner for National Minorities prepare a follow-up study on the situation of Roma and make recommendations to the CSO. Although the High Commissioner's report provided significant and welcome information on the general situation of Roma within the CSCE region, it was not country-specific in its evaluation and, accordingly, did not further examine specific questions relating to the Czech citizenship law. Nevertheless, addressing the concerns raised for Roma by the dissolution of states generally, the report did note that:

“laws on citizenship and aliens should be drafted and implemented in such a way as to not increase the number of stateless persons, to take into account extensive if not lifelong residence in the country, and to serve as the basis for loyal citizenship bonds to the state. Uncertain or unclear legal status resulting from new citizenship laws should not be seen as the pretext for considering long-time or life-long residents as foreigners or recent immigrants, thus subjecting them to possible limits on their political rights or even expulsion from the country.”

Clearly, the Czech citizenship law fails to meet the High Commissioner's recommendations.

Although the High Commissioner's report resulted in agreement to hold a special CSCE seminar devoted exclusively to Roma issues, the CSCE has not yet undertaken any specific follow-up regarding the Czech citizenship law question raised by the CSCE Mission to the Czech Republic, in contrast to the extensive examination by the CSCE of citizenship laws in Estonia and Latvia by both the High Commissioner and Missions of Long Duration in those countries.

### **Implementation of the Citizenship Law**

If applied exactly as written, the Czech citizenship law would have a significantly discriminatory impact. Unfortunately, the discriminatory elements of this law are compounded by discriminatory practices in implementing the law at the local level. The Tolerance Foundation's report, along with additional information received from both governmental and non-governmental sources, suggest the following pattern of problems:

Many Roma were unaware that they were deemed to be Slovaks under the new law and were unaware that a failure to apply for citizenship would render them “aliens.” Many Roma were also unaware of the application deadline.

The law assumes that certain people are not citizens and then imposes on them the financial burdens of obtaining the necessary paperwork to prove otherwise (e.g., by documenting one's residency history, obtaining confirmation from the Slovak government that one is not a Slovak citizen, etc).

Although the law envisions that local officials would be able to help those making the application, in practice this assistance has often been lacking. For those who are illiterate, a significant problem among the Roma community, this has meant that many have been unable to complete an application.

Local officials repeatedly gave inaccurate information regarding the rules for applying for citizenship, particularly regarding: 1) the specific timing of prison record restrictions; 2) the kinds of crimes included within the prison record restriction; 3) the existence of language proficiency requirements (none exist under the law); and 4) provisions for appealing denials of citizenship. Misinformation led many Roma not to apply at all or, in some cases, to denials of citizenship contrary to the terms of the law.

Although, in theory, all ten million Czechoslovak residents of the Czech Republic needed to confirm or apply for Czech citizenship under the new law, not one crown was budgeted to pay for the additional administrative burdens the law generated. The processing of applications was to be paid for by already financially strapped municipal budgets.



## **Implications of the Law**

Many human rights organizations have flagged concern over what will happen to those former Czechoslovaks left without citizenship under the new law. Indeed, some have voiced fear of a mass deportation of Roma, reminiscent of the brutal deportation of Sudeten Germans from Czechoslovakia at the end of World War II or the mass expulsion of ethnic Turks from Bulgaria in 1989.

Officials from the Ministry of Interior, Ministry of Foreign Affairs, Council for National Minorities and Czech Embassy in Washington assured Commission staff that Roma will not be deported as a result of this law. On the contrary, they maintained that the ultimate goal of the Czech government is to integrate Roma into Czech society and, eventually, to extend citizenship to them. In fact, some steps have been already taken to ameliorate some hardships of the law by easing the conditions for those deemed to be Slovak citizens to obtain permanent residency and, ultimately, Czech citizenship (after a period of some years).

In light of this position, the Czech citizenship law seems all the more illogical. If the goal of the Czech government is to eventually extend citizenship to Roma, what is to be gained by denying it to them today? If the goal is to integrate Roma into Czech society, how will that objective be achieved if they are treated as second-class human beings under the current law? As it now stands, Roma who have been stripped of their citizenship are unable to vote, to be elected to a political office, to serve as a judge or police officer, to act as a local representative, or to participate in the privatization process. Public service or welfare benefits for Czechoslovaks deemed to be non-citizens are also reduced, further marginalizing their lives. Moreover, governmental officials have declined to publicize their assurances that Roma will not be deported, leading many Roma to live in fear that they may be seized and deported at any time (and creating uncertainty in Slovakia regarding potential deportations as well).

As Czech officials admit, virtually every person excluded from Czech citizenship under the new law is an ethnic Rom. Although the Czech Republic has a legitimate right as a sovereign state to control its borders and future immigration flows, this law is overly broad in its attempt to meet that goal. As such, this law stands in violation of CSCE and other international commitments and should be amended if the Czech Republic is to live up fully to its human rights promises.

## **CONCLUSIONS**

The Velvet Revolution in Prague in 1989-90 was met with awe and euphoria, both within Czechoslovakia and in foreign capitals. To a great extent, that euphoria has been sustained over the last five years by the strengths of Czech leaders in peacefully guiding their country through a divorce with their Slovak neighbors, in halting the human rights abuses associated with the former regime, and in establishing the nascent institutions for a democratic society. With the opening of the Czech Republic, the historic baroque city of Prague, enhanced by the revival of Czech culture, night life and spirit, has become a mecca for thousands and thousands of young Western tourists every year.

It is clear that the Czech Republic has made enormous progress in its implementation of its CSCE human dimension commitments since the demise of the communist regime. Indeed, today's Czech Republic is judged not in comparison with the former era, but by the standards of modern western democracies. But if the issues and challenges that remain do not have the same urgent quality as the high-profile and

brutal violations of human rights taking place elsewhere in the CSCE region, they are nonetheless integral parts of the democracy to which the Czech Republic aspires, and must therefore be dealt with by both the government and society at large.

Among the human dimension shortcomings that persist in the Czech Republic are the overly broad lustration law and the recently enacted defamation law. These CSCE violations pale in comparison, however, with the impact of the Czech citizenship law. That law, adopted after the dissolution of the Czech and Slovak Federal Republic in 1993, relies on the fictitious communist-era distinction between “Czechs” and “Slovaks” to deny citizenship to as many as 100,000 Czech residents. As Czech officials admit, almost every single one of these people is an ethnic Rom. The CSCE community, international organizations, and non-governmental organizations have already harshly criticized similar (and arguably even less severe) citizenship laws in Latvia and Estonia.

But for the Czech citizenship law, this report would be similar in its discussion and conclusions to Commission reports previously prepared on countries like Poland and Hungary. Admittedly, the dissolution of a country and the attendant citizenship questions are not ones which confront most of the Czech Republic's neighbors. The fact remains, however, that the Czech government's steps to address its legitimate concerns regarding the security of its borders fail to accord with its international commitments. Moreover, the citizenship law is in many ways an indicator of Czech attitudes toward and treatment of the Czech Republic's most significant minority. Treatment of Roma then, including the citizenship law, is more than just a “litmus test for a civil society,” in the words of Vaclav Havel. It is a true test of Czech democracy.